Vancouver
26-Sep-25
REGISTRY

No. S 217586
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

Action4Canada, Linda Morken, Gary Morken, Jane Doe, Ilona Zink, Valerie Ann Foley, Pastor Randy Beatty, Brittany Wilson

PLAINTIFFS

AND

His Majesty the King in right British Columbia, His Majesty the King in right Canada. Prime Minister Justin Trudeau, Chief Public Health Officer Theresa Tam, Dr. Bonnie Henry, Premier John Horgan, David Eby, Adrian Dix, Minister of Health, Mike Farnworth, Minister of Public Safety and Solicitor General Omar Alghabra, Minister of Transport, Vancouver Island Health Authority, The Royal Canadian Mounted Police (RCMP), and the Attorney General of Canada, Peter Kwok, Translink (British Columbia)

DEFENDANTS

NOTICE OF APPLICATION

Name of applicant: The Defendant, Vancouver Island Health Authority ("VIHA")

To: the Plaintiffs

And to: Their Counsel

TAKE NOTICE that an application will be made by the applicant to the presiding judge or associate judge at the courthouse at 850 Burdett Avenue, Victoria, B.C., on 20/OCT/2025 at 9:45am for the order(s) set out in Part 1 below.

The applicant estimates that the application will take 1 day.

☒ This matter is within the jurisdiction of an associate judge.

☐ This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. An order striking the Plaintiff's Amended Notice of Civil Claim in its entirety without leave to amend pursuant to Rule 9-5.

2. Costs.

Part 2: FACTUAL BASIS

3. On August 17, 2021, the Plaintiffs filed a 391-page Notice of Civil Claim (the "Claim") that sought over 200 declarations. It made wide-ranging allegations of conspiracy, sought rulings on questions of science, and alleged criminality in a civil pleading.

4. This Court struck the Claim in 2022, with leave to amend. The Chambers Judge found that the Claim was clearly prolix, unanswerable, "bad beyond argument" and not a proper pleading that could be answered by the defendants. The Chambers Judge struck the entirety of the Claim but left the door open for an amended claim that was intelligible, compliant with the Rules, and confined to matters capable of adjudication: *Action4Canada v. British Columbia (Attorney General),* 2022 BCSC 1507 at paras. 32, 45.

5. The Plaintiffs appealed the decision of the Chambers Judge, and this was dismissed on February 23, 2024. The Court of Appeal held that it was up to the Plaintiffs to redraft the Claim within the well-known boundaries of proper pleadings established by the Rules and authorities and warned the Plaintiffs of the consequences of choosing to pursue claims the Chambers Judge identified as problematic: See *Action4Canada v. British Columbia (Attorney General),* 2024 BCCA 59 at para. 11.

6. On December 12 2024, the Plaintiffs filed a 54-page Amended Notice of Civil Claim (the "Amended Claim"), seeking more than 50 declarations and challenging the scientific and legal basis for the entirety of British Columbia and Canada's response to the COVID-19 pandemic.

7. In the Amended Claim, the Plaintiffs name VIHA, which is a regional health board constituted pursuant to the *Health Authorities Act* R.S.B.C. 1996 c. 180.

8. The Amended Claim constitutes a mere reiteration or repackaging of the allegations, assertions, and allegations advanced in the Claim. The Amended Claim fails to introduce any new material facts or viable causes of action that would cure the deficiencies previously identified. Instead, it repeats the same foundational assertions, without substantively advancing the plaintiff's case.

9. As far as VIHA can tell, the Amended Claim contains no allegations in respect of VIHA. It apparently contains allegations which are unclear and remain deficient against other health authorities that are not or, in the case of Providence Health Care Society, no longer included as a defendant in the Amended Claim.

10. As such, the amendments do not alter the insufficiency of the Claim and amount to an abuse of process insofar as they require VIHA to respond again to claims that are, in substance, unchanged and continue to disclose no reasonable claim.

Part 3: LEGAL BASIS

11. The Plaintiffs' allegations in the Amended Claim disclose no reasonable cause of action, are scandalous, frivolous or vexatious. In the alternative they may prejudice, embarrass or delay the fair trial or hearing of this proceeding.

12. The Amended Claim remains fundamentally flawed in both form and substance. It is overly verbose and fails to present the causes of action in a clear and intelligible way, making it impossible for the defendants to understand the case they must meet. The defects are so substantial that no amendment could reasonably cure them, and the claim has no realistic prospect of success.

13. The Defendants rely upon Rules 1-3, 3-7, 9-5 (1), 14-1 of the *Supreme Court Civil Rules.*

Pleadings Generally

14. *Supreme Court Civil Rule* (the "*Rules*") 3-1 provides, in part:

> **Contents of notice of civil claim**
> (2) A notice of civil claim must do the following:
> (a) set out a concise statement of the material facts giving rise to the claim;
> (b) set out the relief sought by the Plaintiff against each named defendant;
> (c) set out a concise summary of the legal basis for the relief sought;
> …
> (g) otherwise comply with Rule 3-7. [emphasis added]

15. Rule 3-7 provides, in part:

> **Pleading must not contain evidence**
> (1) A pleading must not contain the evidence by which the facts alleged in it are to be proved.
> …
> **Pleading conclusions of law**
> (9) Conclusions of law must not be pleaded unless the material facts supporting them are pleaded.
> …
> **General damages must not be pleaded**
> (14) If general damages are claimed, the amount of the general damages claimed must not be stated in any pleading. …

16. The function of pleadings is to clearly define the issues of fact and law to be determined by the court. The plaintiff must state, for each cause of action, the material facts. Material facts are those facts necessary for the purpose of formulating the cause of action. The defendant then sees the case to be met and may respond to the plaintiff's allegations in such a way that the court will understand from the pleadings what issues of fact and law it will be called upon to decide: *Homalco Indian Band v. British Columbia,* [1998] B.C.J. No. 2703 (S.C.), para. 5

17. Pleadings are intended to define and limit the issues in order to promote fairness, judicial economy and exposition of the truth. The rules governing pleadings exist to support and facilitate that end. Defining and limiting the issues must be done so that the court understands the dispute, and the parties have fair notice of the case to be met and the remedies to be sought. Pleadings are the foundation on which the case rests, and they shape the scope of relevance for both discovery and trial: *Johnston v Rykon Construction Management Ltd*., 2020 BCSC 572 (CanLII), at para 8.

18. Where pleadings are "overwhelmed with difficulty, the various provisions of [Rule] 9-5(1) may apply together": *Grosz v. Royal Trust Corporation of Canada*, 2020 BCSC 128 ("*Grosz*"), para 97.

19. It is not incumbent on the defendant to take steps to try to make sense of the pleadings, or to try to tease out of the plaintiff the specific allegations it will need to answer at trial; it is the plaintiff's onus to plead its case: *Ossudallah v. Swiss Consulting Management Ltd*., 2020 BCSC 567 at para 32.

20. The Amended Claim continues to suffer from pleading deficiencies that have been previously identified by this Court. Despite prior findings highlighting these defects, the Plaintiffs have failed to cure the same deficiencies: see *Action4Canada v. British Columbia (Attorney General)*, 2022 BCSC 1507 and *Action4Canada v. British Columbia (Attorney General)*, 2024 BCCA 59.

21. The Amended Claim fails to meet the required standard of pleading a concise and coherent statement of material facts. The allegations presented are overly verbose, speculative, and intertwined with unsubstantiated conspiracy theories, making it impossible to identify any viable cause of action. The Amended Claim lacks clarity and is unable to differentiate between fact and conjecture, or between distinct causes of action.

22. Consequently, Amended Claim remains fundamentally flawed, despite the opportunity to correct its deficiencies. Its numerous and serious defects are beyond repair, and no plausible amendment could render it viable.

23. The plaintiffs have already been afforded an opportunity to properly plead their claim, with the benefit of guidance from both this Court and the Court of Appeal. They have failed to do so. Granting a further opportunity to amend would serve no purpose other than to cause delay.

Application to Strike

24. Rule 9-5(1) provides:

> **Scandalous, frivolous or vexatious matters**
> (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
> (a) it discloses no reasonable claim or defence, as the case may be,
> (b) it is unnecessary, scandalous, frivolous or vexatious,
> …
> (d) it is otherwise an abuse of the process of the court ...

25. Mr. Justice Punnett provides the legal framework for Rule 9-5(1)(a) in *Lavery v. Community Living British Columbia*, 2022 BCSC 739 as follows:

> [15] The test under Rule 9-5(1)(a) is whether it is "plain and obvious" that the Plaintiffs claim discloses no reasonable cause of action (*Hunt v. Carey*, [1990] 2. S.C.R. 959 at 980).

[16] The pleadings are assumed to be true, and no evidence is admissible. However, if allegations in the pleadings are based on assumptions and speculation, they need not be taken to be true (*Hunt* at para 972; *Edmond v. British Columbia*, 2013 BCSC 1102 at para. 52; *Drummond v. Moore*, 2012 BCSC 496 at para. 18).

[17] Pleadings will be struck where they do not establish a cause of action, do not advance a claim known in law, or are without substance because they are groundless and fanciful (*Dempsey et al. v. Envision Credit Union et al.* 2006 BCSC 750 at para. 17). As stated in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at para. 19:

> [19] The power to strike out claims that have no reasonable prospect of success is a valuable house-keeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.

26. There is considerable overlap amongst the subrules of Rule 9-5(1). Mr. Justice Voith reviewed the rule in *Sahyoun v Ho* 2015 BCSC 392 (appeal dismissed as abandoned) at paras 58-63:

> [58] The test for striking a pleading under R. 9-5(1)(b), on the basis that it is unnecessary, scandalous, frivolous or vexatious, was recently summarized in *Willow v Chong*, 2013 BCSC 1083, where Fisher J. said:
>
> > [20] Under Rule 9-5(1)(b), a pleading is unnecessary or vexatious if it does not go to establishing the Plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: *Citizens for Foreign Aid Reform Inc. v Canadian Jewish Congress*, [1999] BCJ No. 2160 (SC); *Skender v Farley*, 2007 BCCA 629. If a pleading is so confusing that it is difficult to understand what is pleaded, it may also be unnecessary, frivolous or vexatious.
>
> [59] An "embarrassing" pleading, as contemplated by R. 9-5(1)(c), is one that is so irrelevant that to allow it to stand would involve useless expense and would also prejudice the trial of the action by involving the parties in a dispute apart from the issues; *Keddie v. Dumas Hotels Ltd.* (1985), 62 B.C.L.R. 145 at 147 (C.A.).
>
> [60] The abuse of process standard under R. 9-5(1)(d) derives from a flexible doctrine. It allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at paras. 35-37.
>
> [61] Though subsections (a)-(d) of R. 9-5(1) address different concerns and different wrongs, there is also some overlap between these subsections. Thus, for example, a pleading that discloses no cause of action, contrary to R. 9-5(1)(a), can also be unnecessary, frivolous or vexatious within the meaning of R. 9-5(1)(b); see e.g. *Virk v. Brar*, 2012 BCSC 1004 at paras. 69-70.
>
> [62] A pleading can be embarrassing if it does not state the real issue in an intelligible form. It can also be embarrassing if it is prolix, includes irrelevant facts, argument or evidence. It can be prejudicial if it has the effect of confusing the defendant, making it difficult, if not impossible, to answer; *Virk* at para. 75.

27. Pleadings will be struck where: they do not establish a cause of action, do not advance a claim known in law, or they are without substance in that they are groundless and fanciful: *Dempsey et al. v. Envision Credit Union et al.* 2006 BCSC 750 at para. 17

28. A pleading should be struck if it serves no useful purpose and allowing it to proceed would be a waste both of the court's time and of public resources. The power to strike claims that have no reasonable prospect of success under R. 9-5(1)(a) promotes efficiency in litigation and promotes fairer litigation: *Imperial Tobacco* at para. 20.

29. A material fact is one that is essential in order to formulate a complete cause of action. If a material fact is omitted, a cause of action is not sufficiently pleaded and liable to be struck out. See *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500, at para. 9.

30. A pleading that lacks material facts, relies on bald assertions or conclusions of law, or speculates about evidence is insufficient and may be struck: *Kindylides v. Does*, 2020 BCCA 330.

Rule - 9-5(l)(a)-The Notice of Civil Claim Discloses No Reasonable Cause of Action

31. To the extent the Plaintiffs refer to incidents occurring within health care settings, the events as pleaded are alleged to have occurred entirely outside the geographic and operational jurisdiction of VIHA. Put simply, they did not occur at a VIHA facility.

32. The boundaries of VIHA's jurisdiction are established by the Regional Health Boards Regulation, BC Reg 294/2001 (the "Regulation"), which clearly defines the regions for which VIHA is responsible. VIHA is not responsible for and has no involvement with events that occur on the mainland, or in facilities operated by other health authorities.

33. A pleading will only be struck for disclosing no reasonable claim if it is "plain and obvious" that the claim has no reasonable prospect of success: *Nevsun Resources Ltd v. Araya*, 2020 SCC 5 [*Nevsun*] at para. 64.

34. To establish a reasonable cause of action, a pleading must (1) allege facts that are capable of giving rise to a cause of action; (2) indicate the nature of the action which is to be founded on those facts; and (3) indicate the relief sought, which must be of a type that the court has jurisdiction to grant: *Adelberg v Canada*, 2023 FC 252 [*Adelberg*] at para. 45, varied 2024 FCA 106.

35. As all of the allegations in the Amended Claim relate to matters that fall entirely outside of VIHA, and concern areas or facilities over which VIHA has no statutory authority or legal responsibility, the pleadings disclose no material facts capable of supporting a cause of action against VIHA.

36. Moreover, the Plaintiff has not pleaded any discernible claim against VIHA or any health authority. As such, the Plaintiff has failed to meet the minimum pleading requirements. In the absence of a coherent or identifiable claim, VIHA cannot reasonably determine the case to be met or provide a meaningful response.

37. Accordingly, it is plain and obvious that the Amended Claim discloses no reasonable cause of action against VIHA and the claim should be struck in its entirety.

9-5(l)(b) The Notice of Civil Claim is Scandalous, Embarrassing and Frivolous

38. The Amended Claim continues to promote fanciful conspiracy theories about the origins of the COVID-19 pandemic and the efficacy of COVID-19 measures. It also includes broad allegations of conspiracy, as well as allegations of conspiracy, seeks judicial rulings on issues of science, and asserts allegations of criminal conduct, including crimes against humanity.

39. A pleading is scandalous if it does not state the real issue in an intelligible form and would require the parties to undertake useless expense to litigate matters irrelevant to the claim: *Gill v. Canada,* 2013 BCSC 1703, para. 9

40. A claim is also scandalous or embarrassing if it is prolix, includes irrelevant facts, argument or evidence, such that it is nearly impossible for the defendant to reply to the pleading and know the case to meet. Pleadings that are so prolix and confusing that it is difficult, if not impossible, to understand the case to be met, should be struck: *Gill, supra,* para. 9, *Strata Plan LMS3259 v.* Sze *Hang Holding Inc.*, 2009 BCSC 473, at para. 36, *Kuhn v. American Credit Indemnity Co.,* [1992] B.C.J. No. 953 (S.C.)

41. Pleadings are embarrassing where they are prolix, contain argument, or fail to state the real issue in an intelligible way: *Sahyoun v. Ho*, 2015 BCSC 392 at para. 62 [*Sahyoun*].

42. A pleading is frivolous if it is without substance, is groundless, fanciful, 'trifles with the court' or wastes time": *Borsato v. Basra*, [2000] B.C.J. No. 84, 43 C.P.C. (4th) 96, at para 24

43. The general rule that facts pleaded should be accepted as true for the purposes of a strike application does not apply in a "case like this where the notice of civil claim is replete with assumptions, speculation, and in some instances, outrageous allegations. The law is clear that allegations based on assumption and speculation need not be taken as true.": *Willow v. Chong,* 2013 BCSC 1083, para. 19, *See, also, Simon v. Canada,* 2015 BCSC 924 ["*Simon*"], para. 54

44. The Plaintiffs have failed to plead the concise statement of material facts that is necessary to support any complete cause of action. The claims are inextricably bound up in a prolix, argumentative, and wildly speculative narrative of grand conspiracy that is incapable of supporting a viable cause of action. It is impossible to separate the material from the immaterial, the fabric of one potential cause of action or claim from another, or conjecture and conspiracy from asserted facts: *Fowler v. Canada (Attorney General),* 2012 BCSC 367, para. 54, *Simon, supra,* paras 54-59

45. The Amended Claim is scandalous and frivolous, and fails to comply with the chambers judge's ruling. While some egregious conspiracy claims and extraneous footnotes were removed, the Plaintiffs and their counsel must know, or ought to know, that a 54 page Amended Claim concerning extraordinary allegations of criminal conduct, unsubstantiated

challenges to scientific principles, and the efficacy of public health measures, would constitute elements that the chambers judge had previous deemed improper.

46. Many of the purported changes in the Amended Claim simply restate the substance of the original Claim in different terms. As a result, the pleading remains impermissibly vague and incapable of being answered in a clear and concise manner.

Rule 9-5(l)((d) - The Claim is Vexatious and an Abuse of Process

47. Little distinction exists between a vexatious action and one that is an abuse of process as the two concepts have strikingly similar features: *Dixon v. Stork Craft Mamifacturing Inc.,* 2013 BCSC 1117

48. A claim may be struck if it abuses the court's process by violating principles of judicial economy, finality and integrity of the administration of justice: *Grosz v. Royal Trust Corporation of Canada*, 2020 BCSC 128 at para. 65

49. Vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights. Where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious: *Lang Michener Lash Johnston v. Fabian,* [1987] O.J. No. 355 ["*Lang Michener*"], at para. 19

50. A pleading is unnecessary or vexatious if it does not establish the Plaintiff's cause of action or advance any claim known in law: *Vassilaki v Vassilakakis*, 2022 BCSC 763 at para 29

51. It is well established that a plaintiff has an obligation to clearly plead the material facts on which the plaintiff relies in making the claim. Pleadings must enable the court, within a reasonable time and review of the pleading, to find the cause of action and the material facts on which the cause of action is based. It is not for the court to articulate for a litigant a comprehensible and legally recognizable cause of action. Pleadings that do not meet these minimum requirements fail to satisfy the requirements of the Rules and are an abuse of the court's process: *Johnston v Rykon Construction Management Ltd*., 2020 BCSC 572, at para 25

52. The Amended Claim is vexatious and constitutes an abuse of process. It is replete with broad, unsubstantiated allegations, engages irrelevant matters, and seeks relief that is either unavailable at law or wholly disconnected from any proper legal foundation. The pleadings serve no legitimate purpose, unnecessarily burden the parties and the Court, and undermine the integrity of the judicial process.

53. Further, the inclusion of allegations in respect of events occurring at locations or facilities over which VIHA has no authority or control, underscores the improper nature of the Claim. Accordingly, the Plaintiffs are adding unnecessary cost and complexity to the proceedings herein by pursuing a claim that cannot be sustained at law on the facts that have been pleaded.

54. Allowing this claim to proceed would place an undue burden on VIHA, and the Court's resources. Such conduct imposes unnecessary costs and delays on the Court, contrary to the overriding objectives of efficiency and fairness in the administration of justice.

55. Accordingly, the Amended Claim is not only legally untenable but also vexatious and constitutes an abuse of the Court's process and should be struck in its entirety.

56. Further, the plaintiffs should not be granted leave to amend. The plaintiffs have already been given an opportunity to amend their pleadings to fix the defects identified by the Chambers Judge. The plaintiffs have failed to heed the advice provided by the Court and provided a claim which is replete with defects and which violates the basic tenets of pleading. Providing another opportunity to amend their pleadings would serve no purpose other than delaying the inevitable and increasing costs.

Part 4: MATERIAL TO BE RELIED ON

1. The pleadings and other documents filed in this action.

2. Such further and other material as counsel may advise and this honourable court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: 26/Sep/2025

Signature of Timothy J. Wedge
☐ applicant ☑ lawyer for applicant,
Vancouver Island Health Authority

To be completed by the court only:

Order made:

☐ in the terms requested in paragraphs ..... of Part 1 of this notice of application

☐ with the following variations and additional items:

.....

.....

.....

Dated:
.....

Signature of ☐ Judge ☐ Associate Judge

Appendix

THIS APPLICATION INVOLVES THE FOLLOWING:

☐ discovery: comply with demand for documents	☐ summary trial
☐ discovery: production of additional documents	☐ service
☐ other matters concerning document discovery	☐ mediation
☐ extend oral discovery	☐ adjournments
☐ other matter concerning oral discovery	☐ proceedings at trial
☐ amend pleadings	☐ case plan orders: amend

☐ add/change parties ☐ summary judgment	☐ case plan orders: other ☐ experts ☒ None of the above